

PAUL J. FISHMAN
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*UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY*

EDWARD TELCHIN, ET AL.,

Plaintiffs,

v.

ELLIOT PEREL, DPM, ET AL.,

Defendants.

HON.

Civil Action No.

NOTICE OF REMOVAL
OF CIVIL ACTION

To: Middlesex County Civil Records
Superior Court of New Jersey
56 Paterson Street
New Brunswick, NJ 08903

Michelle M. Smith, Esq., Clerk
Office of the Superior Court Clerk
Richard J. Hughes Justice Complex
25 W. Market Street, 6th Floor North Wing
P.O. Box 971
Trenton, NJ 08625

Eric Christopher Landman, Esq.
Herbert I. Ellis, P.C.
Ellis Law Center
87 South Street, First Floor
Freehold, NJ 07728
(Attorneys for the Plaintiffs)

William Buckley, Esq.
Piscotti, Malsch & Buckley, P.C.
30 Columbia Turnpike, Suite 205
Florham Park, NJ 07932
(Attorneys for Elliot Perel, DPM, and Monroe Foot & Ankle Care, PC)

Michael E. McGann, Esq.
Widman, Cooney, Wilson, McGann & Fitterer
Attorneys at Law
1803 Highway 35
Oakhurst, NJ 07755-2911
(Attorneys for Saint Peter's University Hospital)

PLEASE TAKE NOTICE that the case of *Edward Telchin, et al. v. Elliot Perel, DPM, et al.*, previously pending in the Superior Court of New Jersey, Law Division, Middlesex County, assigned Docket Number L-05610-12, is hereby removed to the United States District Court for the District of New Jersey, pursuant to the provisions of 28 U.S.C. §§ 1442(a)(1) and 2679(d)(2). Pursuant to 28 U.S.C. § 2679(d)(2), the United States, now substituted as a defendant in this matter, through its attorney, Paul J. Fishman, United States Attorney for the District of New Jersey (Allan B. K. Urgent, Assistant United States Attorney, appearing), states as follows upon information and belief:

1. The Plaintiffs named Dr. Rochelle Rubinov-Volosov (incorrectly identified in the First Amended Complaint as Rochelle Voloso, MD, and Rochelle Volos, MD) as a defendant in this action. Copies of the Summons, the First Amended Complaint and all documents served therewith are attached as Exhibit 1.

2. The Plaintiff has demanded damages, interest and costs of suit for injuries allegedly sustained as the result of tortious conduct of the named defendants.

3. Pursuant to 2679(d)(2) of the Federal Tort Claims Act, and 28 C.F.R. § 15.4, the United States Attorney has certified that Dr. Rochelle Rubinov-Volosov was acting within the

scope of her employment with the U.S. Department of Veterans Affairs (“VA”) as a podiatry resident training at the VA New Jersey Health Care System at all times relevant to the allegations in the Complaint. A Certification of Scope of Employment is attached as Exhibit 2.

4. Pursuant to 28 U.S.C. §§ 2679(d)(1) and (2), Dr. Rochelle Rubinov-Volosov has personal immunity and the United States is the only cognizable and proper defendant as to the Plaintiffs’ state law tort claims alleged against her in this action. Moreover, as a result of the Certification of Scope of Employment, this action is now deemed to be brought against the United States.

5. Federal law directs that “[u]pon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court *shall be removed without bond at any time before trial* by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending.” 28 U.S.C. § 2679(d)(2) (emphasis added). On information and belief, no trial date for this matter has been set by the state court.

6. Accordingly, the United States District Court for the District of New Jersey has exclusive jurisdiction over this action under 28 U.S.C. § 1346(b), and this action is properly removed to this Court pursuant to 28 U.S.C. §§ 1442(a)(1) and 2679(d)(2).

7. No answer to the First Amended Complaint has been filed in the state court on behalf of Dr. Rochelle Rubinov-Volosov or the United States.

8. A copy of the Answer to the First Amended Complaint filed by Defendants Elliot Perel, DPM, and Monroe Foot & Ankle Care, PC, is attached as Exhibit 3.

9. A copy of the Answer to the First Amended Complaint filed by Defendant Saint Peter's University Hospital is attached as Exhibit 4.

10. A copy of this Notice of Removal is being filed with the Superior Court of New Jersey, Law Division, Middlesex County. Copies of the Notice of Removal are also being served on all parties that have appeared in the action.

THEREFORE, in accordance with 28 U.S.C. §§ 1442(a)(1) and 2679(d)(2), the above-captioned action brought in the Superior Court of New Jersey, Law Division, Middlesex County, is hereby removed to the United States District Court for the District of New Jersey for further proceedings.

Dated: March 24, 2014

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

By: *s/Allan B. K. Urgent*

ALLAN B. K. URGENT
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the within Notice of Removal and all referenced attachments by First Class Mail on March 24, 2014, upon the following:

Middlesex County Civil Records
Superior Court of New Jersey
56 Paterson Street
New Brunswick, NJ 08903

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Michael E. McGann, Esq.
Widman, Cooney, Wilson, McGann & Fitterer
Attorneys at Law
1803 Highway 35
Oakhurst, NJ 07755-2911

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Executed on this 24th day of March, 2014

s/Allan B. K. Urgent

ALLAN B. K. URGENT
Assistant United States Attorney